



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD124

National Environmental Policy Act Compliance for Council-Initiated Fishery Management

Actions under the Magnuson-Stevens Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of draft revised and updated National Environmental Policy Act (NEPA) procedures for Magnuson-Stevens Act fishery management actions; request for comments.

SUMMARY: The purpose of this notice is to notify the public that on February 19, 2013, NMFS issued an internal policy pertaining to complying with NEPA in the context of Magnuson-Stevens Act (MSA) fishery management actions. This policy, entitled “National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions under the Magnuson-Stevens Act” (the policy) clarifies roles and responsibilities of NMFS and the Regional Fishery Management Councils (Council or FMCs), explains timing and procedural linkages, provides guidance on documentation needs, and fosters partnerships and cooperation between NMFS and FMCs on NEPA compliance.

NMFS consulted with the Councils and with the Council on Environmental Quality (CEQ) on proposed revisions to the 2013 NMFS NEPA policy directive, and based on those consultations NMFS now proposes to use this policy as a basis for issuing revised and updated

NEPA procedures for MSA actions in the form of a line-office supplement to NOAA Administrative Order (NAO) 216-6.

DATES: NMFS will accept written comments on the draft revised NEPA procedures until [INSERT DATE 90 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2014-0024, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0024, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Steve Leathery, NMFS NEPA Coordinator, Room 10828, 1315 East West Highway, Silver Spring MD 21755.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Steve Leathery, 301- 427- 8014.

SUPPLEMENTARY INFORMATION:

The 2007 Magnuson-Stevens Reauthorization Act (MSRA) required NMFS to “revise and update” agency procedures to comply with NEPA for fisheries management actions. In developing a proposed approach, NMFS conducted extensive public outreach which included the following:

- Consulted with the Council on Environmental Quality (CEQ) and the Councils.
- Posted Trigger Questions, developed by NMFS, and a Strawman proposal, developed by the Council Coordination Committee (CCC), for 60-day public comment.
- NMFS made presentations at meetings of all eight FMCs on Trigger Questions and Strawman during the 60-day period; NMFS received over 1600 comments.
- NMFS published proposed rule May 2008 with a 90-day comment period; conducted 3 NMFS-sponsored public hearings and a public workshop; conducted presentations at meetings of all eight FMCs; and received over 150,000 public comments.

NMFS’s initial approach was to propose a rule creating new regulatory requirements aligning the decision-making processes of the Councils and NMFS under the MSA with the analytical and procedural requirements of NEPA. The proposed rule would have required Council consideration of draft NEPA documents prior to recommending fishery management measures, and NMFS consideration of a final NEPA document during Secretarial review of the measures. These comment periods could be less than 45 days each in limited circumstances, but in no case could the combined total of days be less than 45, which is the minimum comment period established by CEQ’s regulations for EISs. The proposed rule would have included regulatory provisions pertaining to inadequate and incomplete information, a new categorical exclusion for exempted fishing permits, and it would have changed the name of the EIS-level

NEPA compliance document for fisheries management to reflect the integration of fisheries management and environmental considerations. It also would have established a new tiering mechanism modeled on fishery management plan (FMP) “frameworks.”

NMFS published the proposed rule on May 14, 2008, and provided for a 90-day public comment period. During the public comment period, NMFS delivered presentations at meetings of all eight Councils and conducted three NMFS-sponsored public listening sessions: one in Washington, DC metro area, one in St. Petersburg, FL, and one in Seattle, WA. In addition, NMFS, Council representatives, and CEQ held an interactive public workshop in the Washington DC area. By the close of the public comment period, NMFS had received over 150,000 comment letters, many of which were form letters urging NMFS to withdraw the proposed rule and start over.

NMFS subsequently determined that it would be more appropriate to revise and update internal guidance rather than to create new regulatory requirements. On February 19, 2013, NMFS issued a policy titled “National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions under the Magnuson-Stevens Act.” This policy clarifies roles and responsibilities of NMFS and the Councils, explains timing and procedural linkages, provides guidance on documentation needs, and fosters partnerships and cooperation between NMFS and FMCs on NEPA compliance. Issuance of this policy satisfied the requirements of section 304(i) of the MSA.

After issuing the 2013 Policy Directive, NMFS consulted with the Council Coordination Committee (CCC) at its public meeting in May 2013, and also had follow-up dialog with a subcommittee the CCC established to represent the CCC on these matters. Additionally, NMFS consulted with CEQ. Based on those consultations, NMFS is now proposing to use this policy as

a basis for a line-office supplement to NAO 216-6, and is publishing the draft revised and updated NEPA procedures for MSA actions to solicit public comment.

NMFS anticipates further improvements to the NEPA process at the NOAA level as a result of ongoing efforts to update NAO 216-6. NMFS will work to ensure consistency between any future NOAA-level NEPA policy and procedures and these revised and updated MSA NEPA procedures.

Key features of the draft revised and updated NEPA procedures include:

- Roles and Responsibilities: The draft procedures set forth the statutory roles and responsibilities for NMFS and the Councils as dictated by NEPA and the MSA. While providing clarity on ultimate responsibilities, they encourage collaboration and early integration of processes. For Atlantic Highly Migratory Species (HMS), NMFS retains responsibility over all aspects of compliance.
- Timing: The draft procedures encourage completing as much of the NEPA process as possible at the Council level, while recognizing the logistical demands of the fishery management process. The draft procedures establish a procedural nexus linking NEPA's requirements with MSA's. The nexus highlights the requirement for the Regional Administrator to determine a package "complete" to initiate MSA review; sets forth the timing requirements of the MSA and NEPA, and includes risk-based considerations for determining the NEPA schedule.
- Documentation: This section clarifies that the statement of purpose and need in the NEPA analysis should be linked to the fishery management need the Council is addressing. It also addresses the alternatives to be considered and what "reasonable" alternatives should be, and it provides guidance, derived from CEQ's 40 Most-Asked

Questions, on defining the “no action” alternative in a fishery management context. It also specifies that, based on information in the NEPA analysis, it may be appropriate for a ROD to go beyond the question of approving or disapproving the recommendation at hand, and may include an identification of additional conservation and management needs, as appropriate.

- Improvements/Efficiencies: This section includes instructions for optional use of broad analyses and tiering, and incorporation by reference. It also identifies best practices for early collaboration using information technology and early communication.
- Relationship to other Documents: This section describes the policy’s relationship to other existing documents and policies including the NMFS and Council 1997 Operational Guidelines, the NOAA NEPA Administrative Order (NAO 216-6), and CEQ’s NEPA regulations.

The draft revised and updated NEPA procedures are intended to:

- Add additional references to NEPA’s requirements;
- Add additional description about Council processes;
- Add greater specificity to certain timing requirements; and
- Clarify NMFS’s intent with regards to usage of NEPA documents.

Both the 2013 Policy Directive, and the draft revised and updated NEPA procedures for MSA actions are available online at <http://www.nmfs.noaa.gov/msa2007/nepa.htm>. After considering comments, NMFS intends to finalize the proposed NEPA procedures for MSA actions and to withdraw the proposed May 2008 rule.

Dated: June 24, 2014.

Emily H. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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